IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5954 of 2007()

CRIME NO.292/07 OF RANNI POLICE STATION

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: PETITIONERS/ACCUSED 1 & 2

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1. BABU,S/O.PODIYAN,
KAITHAVANAPARAMBIL,
CHELLAKKADU (P.O.) RANNY.

2. GIGI @ MATHEW VARGHESE,
MAMOOTIL, MAKKAPPUZHA (P.O.)
ERNAKULAM.

BY ADV. SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU

RESPONDENTS: STATE

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 5954 OF 2007

Dated this the 3rd day of October, 2007

ORDER

Application for anticipatory bail. The petitioners are accused 1 and 2. They face allegations of having committed the offences punishable, inter alia, under Secs.452, 324 and 427 read with Sec.149 of the IPC. The alleged incident took place on 1/9/07. Prior animosity is the alleged motive. Crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. There is a civil dispute consequent to a Will allegedly executed. Because of such animosity, false allegations are being raised. The alleged loss is only of Rs.750/-. This proceeding is a counter blast against the other proceeding/litigation between the parties. In these

circumstances, anticipatory bail may be granted to the petitioners, it is prayed.

3. The petitioners' application for anticipatory bail was earlier dismissed by the learned Sessions Judge. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that it is for the petitioners to appear before the learned Magistrate and seek regular bail. No reasons justifying the invocation of the extraordinary equitable discretion are shown to exist, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I am unable to find any features in this case which would justify or warrant the invocation of the discretion under Sec.438 of the Cr.P.C. The learned Public Prosecutor points out that the residential building of the de facto complainant has suffered damage in the circumstances. This, the learned Public Prosecutor submits, is a fit case where the petitioners must surrender before the learned Magistrate. I agree with the learned Public Prosecutor that this is a fit case where the petitioners must surrender before the learned Magistrate and seek regular bail. Entirely different considerations will weigh with the court while considering the application for regular bail. Exceptional reasons must be shown

to justify the invocation of the extraordinary equitable discretion. Such exceptional reasons are not available in this case. The petitioner must, in these circumstances, go before the learned Magistrate and seek regular bail.

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge